



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2013

Mr. David V. Overcash
Counsel for the City of Aubrey
Wolfe, Tidwell & McCoy, L.L.P.
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2013-22141

Dear Mr. Overcash:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 509051 (City File No. C04006PIR20130926-01).

The City of Aubrey (the "city"), which you represent, received a request for names, addresses, and device information for residents and businesses that require backflow testing and the month the customers are due for backflow testing. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-17293 (2013). In Open Records Letter No. 2013-17293, we concluded, the city must withhold the customer addresses you marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code but must release the remaining responsive information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2013-17293 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the

submitted information was not subject to prior ruling, we will address your arguments under sections 552.101 and 552.136 of the Government Code.

Next, you state some of the submitted information, which you have marked, is not responsive to the present request. Upon review, we agree the information you marked and the additional information we marked is not responsive to the instant request because it does not consist of the requested names, addresses, device information, or months the customers are due for testing. This ruling does not address public availability of any information that is not responsive to the requests and the city is not required to release such information in response to this request.¹

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 182.052 of the Utilities Code, which provides in part:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer’s account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer’s volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). “Personal information” under section 182.052(a) means an individual’s address, telephone number, or social security number, but does not include the individual’s name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). We note because section 182.052 is intended to protect the safety and privacy of individual customers, this statute is applicable only to information pertaining to natural persons, and does not protect information relating to business, governmental, and other artificial entities. *See* ORD 625 at 4-5 (in context of section 182.051(4) of the Utility Code, “individual” means only natural persons and does not include artificial entities). Water, wastewater, sewer, and garbage services are included in the scope of utility services covered by section 182.052. *See* Util. Code § 182.051(3).

¹As our ruling is dispositive, we need not address your argument under section 552.136 of the Government Code.

Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054.

You state the information you marked in Exhibit 2 consists of the addresses of individuals who have timely elected to keep their personal information confidential. You state none of the exceptions listed in section 182.054 apply to the responsive information. Upon review, we find the city must withhold the customer addresses you marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.

In summary, the city must continue to rely on Open Records Letter No. 2013-17293 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must withhold the customer addresses you marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. The remaining responsive information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 509051

Enc. Submitted documents

c: Requestor
(w/o enclosures)